

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REMOVAL AMENDED ADMINISTRATIVE ORDER
UNDER SECTION 311(c) OF THE CLEAN WATER ACT
REGION 5

IN THE MATTER OF BP PRODUCTS NORTH AMERICA INC. AND BP PIPELINES
(NORTH AMERICA), INC.

Docket Number: CWA1321-5-10-002

Proceedings under Section 311(c) of the Clean Water Act, 33 U.S.C. § 1321(c), as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*

I. JURISDICTION AND GENERAL PROVISIONS

1. The United States Environmental Protection Agency (USEPA) is issuing this Amended Order to: BP Products North America Inc., a Maryland corporation conducting business in the State of Indiana; and BP Pipelines (North America) Inc., a Maine corporation conducting business in the State of Indiana (Respondents). This Amended Order is issued pursuant to the authority vested in the President of the United States by Section 311(c) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(c), as amended, commonly referred to as the Clean Water Act (CWA). This authority has been delegated to the Administrator of the USEPA by Executive Order No. 12777, 58 *Fed. Reg.* 54,757 (Oct. 22, 1991), and delegated to the USEPA Regional Administrators by USEPA Delegation No. 2-89 and redelegated to On-Scene Coordinators by USEPA Region 5 Delegation No. 2-89.
2. This Amended Order requires performance of removal actions in connection with a facility located at or near 175th Street and White Oak Avenue in Hammond, Indiana. This Amended Order requires the Respondents to immediately conduct removal of a discharge or to mitigate or prevent a substantial threat of a discharge of oil.

II. PARTIES BOUND

3. This Amended Order applies to Respondents. The Amended Order further applies to persons acting on behalf of Respondents, or who succeed to an interest in Respondents. Any change in ownership or corporate status of a Respondent, including but not limited to a transfer of assets or real or personal property will not alter the responsibilities under the Amended Order.
4. Respondents must ensure that their contractors, subcontractors, and agents comply with this Amended Order. Respondents will be liable for any violation of the Amended Order by their employees, agents, contractors, or subcontractors.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Amended Order which are defined in Section 311 of the CWA, 33 U.S.C. § 1321, or in Section 1001 of the Oil Pollution Act (OPA), 33 U.S.C. §§ 2701, shall have the meaning assigned to them in the CWA or the OPA. Whenever terms listed below are used in this Amended Order, the following definitions shall apply.

6. "Oil" shall have the meaning set forth in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), for the purposes of the work to be performed under this Amended Order, and Section 1001(23) of OPA, 33 U.S.C. § 2701(23), for purposes of reimbursement of costs.

7. "Hazardous substance" shall have the meaning set forth in Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14).

8. "Navigable waters" shall have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), Section 1001(21) of OPA, 33 U.S.C. § 2701(21), and 40 CFR Part 110.

9. "Facility" shall have the meaning set forth in Section 311(a)(10) and (a)(11) of the CWA, 33 U.S.C. §§ 1321(a)(10) and (a)(11), and by Sections 1001(22) and (24) of the OPA, 33 U.S.C. §§ 2701(22) and (24).

10. "Discharge" shall have the meaning set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) and 40 CFR Part 110.1 for purposes of the work to be performed under this Amended Order, and shall have the meaning set forth in Section 1001(7) of the OPA, 33 U.S.C. § 2701(7), for purposes of reimbursement of cost.

11.a. "Order" shall mean the August 18, 2010 Order issued to Respondents under Section 311(c) of the CWA, 33 U.S.C. § 1321(c).

b. "Amended Order" shall mean this Amended Order.

12. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 CFR Part 300, including, but not limited to, any amendments thereto.

IV. FINDINGS OF FACT AND VIOLATIONS

13. The pipeline is an onshore facility running from the BP Whiting Refinery in Whiting, Indiana to a terminal in Manhattan, Illinois. The pipeline includes a section which is approximately 3.15 miles that contained approximately 90,000 gallons of oil product when an oil spill from the pipeline occurred at or near 175th and White Oak Avenue in Hammond, Indiana.

14. On or before August 13, 2010, following citizen complaints of odors, Respondents discovered that the pipeline released oil product in a residential area in Hammond, Indiana. Oil discharged into the soil and subsequently entered the Hammond sanitary sewer system which

may discharge to the Little Calumet River. The Little Calumet River is a navigable water of the United States.

15. Respondents are the owners and/or operators of the facility or vessel from which the discharge or substantial threat of a discharge took place.

16. After the spill was discovered, Respondents isolated a 3.15 mile section of pipeline to prevent further oil from entering that area of the facility and minimize further spillage.

17. USEPA issued an Order on August 18, 2010. Respondents subsequently identified the source of the leak from the pipeline; removed the damaged section of pipeline where the leak occurred; removed contaminated soils from around the damaged pipeline area; assisted in temporary relocation of nearby residents due to odors and repair activities; and installed monitoring, extraction and recovery wells to capture free oil product that entered into the soils, and a wellpoint dewatering system in an effort to establish hydraulic control of groundwater to prevent the migration of Volatile Organic Compounds (VOCs).

18. Based on current information, USEPA has determined that free oil product, which includes ignitable substances, remains in the groundwater and presents a threat of discharge to navigable waters and to human health and the environment. Continued pumping of such free product is the most effective way to abate the threat.

19. The Order of August 18, 2010 requires the removal of contaminated soils by September 15, 2010. USEPA has determined that extraction of the remaining free product must occur prior to excavation of soils in certain areas to avoid risks posed by ignitable substances, pursuant to the Amended Work Plan required herein.

V. ORDER

Respondents must comply with the following requirements:

Work to Be Performed

20. Respondents must perform the work necessary to complete the tasks described below within the dates specified and in accordance with the National Contingency Plan, 40 CFR Part 300.

21. Respondents must identify a contact person responsible for the removal within 1 business day of issuance of the Order.

22. Respondents must confirm that the following immediate stabilization and mitigation actions have been completed as required by USEPA's August 18, 2010 Order within 3 business days of issuance of the Order:

- Isolate and depressurize the pipeline from Summer Street to Little Calumet Lift Station by August 18, 2010;
- Stop pressurized flow from the pipeline at the suspected discharge location at 175th and White Oak Avenue by August 18, 2010;
- Excavate and identify the source of the pipeline release by 1800 hours on August 22, 2010 as directed by USEPA, State and Local officials in Unified Command;
- Deploy appropriate oil recovery and containment devices and equipment, *e.g.* skimmers, vacuum trucks, absorbent/containment booms by August 18, 2010;
- Perform continuous air monitoring and sampling as directed by USEPA and public health officials beginning August 18, 2010;
- Assess and mitigate any impacts to drinking water supplies associated with the discharge beginning August 18, 2010;
- Assess impact and or contact of oil to the 30 inch drinking water line which runs adjacent to pipeline, through excavation, air monitoring, and if necessary, visual inspection as directed by USEPA, State and local officials in Unified Command;
- Perform groundwater, storm water, surface water, soil and sediment sampling of impacted areas as directed by USEPA, State and local officials in Unified Command; and
- Notify USEPA immediately, but no later than Sunday, August 22, 2010, after discovery of the discharge point and of the date and time that the discharge of oil from the pipeline ceased and the date and time the discharge of oil ceased into the sewer that runs to the lift station that may discharge to the Little Calumet River at Walnut Avenue.

23. Respondents shall continue to take the following stabilization and mitigation actions:

- Remediate the oil and contaminated soil without delay in accordance with schedules contained in the Amended Work Plan as approved by USEPA;
- Remediate any impacted areas (including shoreline, if any) along the Little Calumet River, and if impacted, the Grand Calumet River, in accordance with the Amended Work Plan; and
- Dispose of all wastes at USEPA approved disposal facilities.

24. Within 1 business day from the effective date of this Amended Order, Respondents must develop and submit to USEPA for approval, a work plan (Amended Work Plan) that addresses the remediation of subsurface contamination through the point of excavation of contaminated soils, including a schedule for completing the tasks described below. This comprehensive Amended Work Plan should include the following:

- Sampling and analysis;
- Quality assurance;
- Data collection and evaluation;
- Remedial system effectiveness (i.e., evidence of hydraulic control of both the LNAPL and dissolved phase plumes);

- Product capture;
- Excavation of drinking water lines;
- Indoor and ambient air monitoring; and
- Waste treatment, transportation, and disposal.

25. Respondents shall submit an interim report (Interim Report) to USEPA no later than October 15, 2010. The Interim Report shall describe all work completed to extract free oil product, including monitoring and analytical data, disposal records, and all documentation related to the response action. The Interim Report shall include a schedule for remediation of all remaining contaminated soil. USEPA will approve, disapprove and require modifications, or modify Respondents' Interim Report. Once approved or approved with modifications, Respondents' Interim Report and schedule become an enforceable part of the Amended Work Plan and this Amended Order.

26. Respondents must submit all documents required by this Amended Order to:

James Mitchell, Federal On Scene Coordinator
Emergency Response Section 4
U.S. EPA, Region 5 (SE-5J)
77 West Jackson Blvd.
Chicago, IL 60604

Or via email at mitchell.james@epa.gov

USEPA will approve, disapprove and require modifications, or modify Respondents' Amended Work Plan. Once approved or approved with modifications, Respondents' Work Plan and schedule become an enforceable part of this Amended Order.

Reporting Requirements

27. Respondents must submit a written progress report to USEPA concerning actions undertaken pursuant to this Amended Order every 7 calendar days after the effective date of this Amended Order, unless otherwise directed in writing by USEPA personnel. These reports must describe all significant developments during the preceding period, including work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

28. Respondents may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to USEPA pursuant to this Amended Order, provided such claim is allowed by Section 308(b)(2) of CWA, 33 U.S.C. § 1318(b)(2). USEPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by USEPA, USEPA may make it available to the public without further notice to Respondents. Respondents must not assert

confidentiality claims with respect to any data or documents related to site conditions, sampling or monitoring.

Access to Property and Information

29. Respondents must provide access to the facility, to off-site areas where access is necessary to implement this Amended Order, and to all documents related to conditions at the facility and work conducted under the Amended Order. Respondents must provide this access to USEPA and the United States Coast Guard and their contractors and representatives.

VI. RESERVATION OF RIGHTS AND PENALTIES

30. This Amended Order shall not preclude USEPA from taking any action authorized by the CWA, the OPA, the National Contingency Plan, or any other applicable law. USEPA reserves the right to direct all activities including off-facility shipping, disposal and all other matters. Further, nothing herein shall prevent USEPA from seeking legal or equitable relief to enforce the terms of this Amended Order or from taking any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to the CWA, the OPA, or other applicable law.

31. Respondents must notify USEPA of any response actions taken to address the discharge described above that are not described in this Amended Order.

32. Violation of any term of this Amended Order may subject Respondents to a civil penalty of up to \$37,500 per day of violation or an amount up to three times the cost incurred by the Oil Spill Liability Trust Fund as a result of such failure under Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B), as adjusted by 74 *Fed. Reg.* 626 (Jan. 7, 2009) (codified at 40 CFR § 19.4).

33. Respondents may request a conference with USEPA regarding the terms and requirements of this Amended Order.

VII. EFFECTIVE DATE

34. The effective date of this Amended Order shall be the date of the receipt of this Amended Order by the Respondents.

James Mitchell
On-Scene Coordinator

September 15, 2010
Date

Received by: James G. Estep
Representing Respondents

September 15, 2010
Date